

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GABRIELLE J. VANDENBOSCH and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA

*Docket No. 01-6; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of November 6, 1999 on the basis that she no longer suffered any continuing residuals from her July 29, 1974 employment injury.

On July 29, 1974 appellant, then a 38-year-old registered nurse, sustained a traumatic injury to her back while in the performance of duty. Appellant ceased working the day after her injury and has yet to return. The Office accepted the claim for cervical strain and herniated cervical disc and placed appellant on the periodic compensation rolls.

By decision dated October 18, 1999, the Office terminated appellant's compensation. The Office based its decision on the August 3, 1999 opinion of Dr. J. Pierce Conaty, a Board-certified orthopedic surgeon. Dr. Conaty diagnosed mild degenerative changes in the cervical spine and radiculitis, upper extremities. Additionally, Dr. Conaty found there were no continuing residuals of appellant's work injury and he attributed her current complaints to the aging process.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

¹ *Curtis Hall*, 45 ECAB 316 (1994).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

As noted above, the Office based its decision to terminate compensation on Dr. Conaty's August 3, 1999 opinion that appellant suffered no continuing residuals from her work-related injury. Dr. Conaty reviewed appellant's extensive medical records, conducted a physical examination and obtained recent x-rays and objective studies. Based upon the available information, he diagnosed mild degenerative changes in the cervical spine and radiculitis, upper extremities. Additionally, Dr. Conaty attributed appellant's current complaints to the aging process.

A July 28, 1999 electromyography and nerve conduction study was interpreted as normal. Additionally, recent x-rays of the cervical spine were found to be essentially normal for appellant's age. Dr. Conaty also reviewed a June 24, 1999 magnetic resonance imaging (MRI) scan of the cervical spine, which revealed mild to moderate unvertebral joint hypertrophy with associated foraminal narrowing on the right at C3-4 through C6-7. On physical examination, Dr. Conaty noted objective findings of positive axial compression test with pain referenced to the neck; mild muscle tenderness throughout the trapezius and the superior angle of the scapula on the left; decreased range of motion of the cervical spine; abnormal sensation to pinprick in the left upper extremity; and hypesthesia in the ulnar aspect of the left forearm extending to the palmar aspect of the left hand, ring and little finger.

Dr. Conaty indicated that appellant has pain involving both shoulders, which interferes with shoulder activity in reaching or activity at or above shoulder level. However, he found no restricted motions in the upper extremities. With respect to the etiology of appellant's current condition, Dr. Conaty stated that her complaints or symptoms are not related to employment. He explained that appellant's soft tissue injury some 25 years ago produced a period of discomfort, but no significant evidence of herniated disc notwithstanding the Office's acceptance of this latter condition. Dr. Conaty surmised that the acute period of discomfort arising from the employment injury would resolve in four to six months. He further indicated that the current objective findings were more likely related to ongoing degenerative changes in the cervical spine consistent with the aging process.

In contrast, Dr. Stanley van den Noort, a Board-certified neurologist and appellant's treating physician, indicated in a report dated August 30, 1999, that appellant's current disabling condition was attributable to her July 29, 1974 employment injury. However, Dr. van den Noort's August 30, 1999 report is insufficient to create a conflict of medical opinion. Unlike Dr. Conaty's comprehensive 19-page report, Dr. van den Noort's most recent report is quite brief and does not provide much in the way of physical findings. Moreover, Dr. van den Noort improperly engaged in a discussion of the legal issues regarding appellant's claim, thereby, injecting extra medical considerations into his judgment.³ Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's compensation based on the accurate, thorough and well-rationalized opinion of Dr. Conaty.⁴

³ See *Joseph W. Baxter*, 36 ECAB 228, 230 (1984).

⁴ See *Gary R. Sieber*, 46 ECAB 215, 224 (1994).

The October 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 6, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member